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SUBJECT: Nigeria 2004 Special 301 Review on IPR
Protection

Ref: State 29549

11. SUMMARY. Progress on IPR protection in Nigeria continues to be hampered by inadequate funding and poor public and government awareness. Nonetheless, we do not believe Nigeria should be added to the Watch List because improvements, however small, are detectable, and any momentum would likely be lost with sanctions. While the GON improved its position in the last year regarding its use of computer software, it has not yet paid licensing fees. Nigeria made slight improvements in the areas of optical media piracy and prosecution of IPR violations, but a lack of resources and training, coupled with low public and government understanding and appreciation of the benefits of IPR protection, leave enforcement weak. Industry and government representatives nonetheless attest to the GON's continued attention to IPR issues and incremental efforts to address piracy and improve enforcement. END SUMMARY.

1A. Optical Media Piracy

12. Nigeria remains a large market for a wide range of pirated optical media products. Pirated versions of CDs and VCDs abound for sale on the streets of Nigeria's urban centers. Much of the pirate disc industry is centered in a section of Lagos where several local optical media companies have the capacity to produce over 500 copies of CDs, DVDs, and VCDs daily.

13. The GON appears to have taken a step toward addressing this problem, but effective enforcement is stalled. We are told that the Nigerian Copyright Commission (NCC) now requires anti-piracy holograms to be included on optical media; however, a court injunction has put the prosecution of at least one case in jeopardy, as well as future enforcement of the hologram scheme.

1B. Use/Procurement of Government Software

14. Until recently, the GON was considered the largest abuser of IPR in that most, if not all, government offices used pirated software. In early 2002 President Obasanjo directed all ministries and parastatals to account for the software in their possession, and to regularize software usage. In 2003 the National Information Technology Development Agency (NITDA), in coordination with the NCC, completed an audit of software in use by the government and negotiated license agreements with the software owners.

15. Microsoft reports that it has signed licensing agreements with most government and parastatal agencies, and considers this a major step toward legitimizing government usage of its software. However, the GON is yet to pay the fees associated with the licensing agreements, and it is unclear when or if such funds will be appropriated.

1C. TRIPS Compliance

16. Nigeria is a signatory to the Universal Copyright Convention and the Berne Convention. In 1993, Nigeria became a member of the World Intellectual Property Organization (WIPO) and thereby became party to most of the major international agreements on intellectual property rights. The Patents and Design Decree of 1970 governs the registration of patents; and the Standards Organization of Nigeria is responsible for issuing patents, trademarks, and copyrights. Once conferred, a patent conveys an exclusive right to make, import, sell, or use the products or apply the process. The Copyright Decree of 1988, based on WIPO standards and U.S.

copyright law, makes it a crime to export, import, reproduce, exhibit, perform, or sell any work without the permission of the copyright owner.

17. In 1999, amendments to the Copyright Decree incorporated most TRIPS protections for copyrights, except provisions to protect geographical indications and undisclosed business information. The amendment also gave the Nigerian Copyright Commission (NCC) additional enforcement powers.

18. Four TRIPS-related bills and amendments have been under consideration for two years, but none have been forwarded to the National Assembly. The Ministry of Justice is reviewing their provisions. According to the GON, the World Intellectual Property Organization (WIPO) reviewed the first three of the acts listed (all except the plant and animal variety legislation) and determined that their enactment would bring Nigeria into full compliance with TRIPS.

--The Nigerian Copyrights Commission (NCC) and the Trademarks and Patents Registry (TPR) prepared a bill that would merge both agencies to establish an Intellectual Property Commission (IPCON). The draft law provides for the new commission to retain a part of the fees it would collect to fund operations and programs.

--The Ministry of Justice is reviewing an amendment to the Patents and Designs Act that will make comprehensive provisions for the registration and proprietorship of patents and designs.

--The Ministry of Justice is also reviewing an amendment to the Trademarks Act that will improve existing legislation relating to the recording, publishing, and enforcement of trademarks.

--A bill to provide protection for plant varieties, including biotechnology, and animal breeds, was discussed by various agencies, but no progress has been reported.

----- 1D. Enforcement -----

19. Law enforcement remains weak, and the judicial process is slow and subject to corruption. Inadequate funding of law enforcement and judicial functions is the major obstacle to effective enforcement of IPR laws. Police and courts lack everything from staff and computers to vehicles and office supplies.

110. Companies rarely seek trademark or patent protection because it is generally perceived as ineffective given the sad state of police and court infrastructure. Microsoft reports it pursued only one raid in 2003. The company has made an effort to assist government IPR enforcers with logistical support, such as donating a bus for the movement of officers to the location of a raid. The company also reports that it has been asked for a wide variety of in-kind assistance, and it does not want to fall into a pattern in which it is expected to pay for the proper enforcement of Nigerian law. It is unlikely that law enforcement will improve without assertive political leadership, policy direction, and perhaps most important, adequate financial support.

111. Another key deficiency is an inadequate appreciation among regulatory officials, distributor networks, and consumers of the benefits of intellectual property rights protection. This is coupled with the fact that the average consumer price of legally produced or imported materials is beyond the reach of most Nigerians. In 2003 the managers and legal advisors of two banks charged with using unlicensed software convincingly claimed they simply didn't realize they were obligated to use licensed copies of computer operating systems. In another instance, two major insurance firms have been balking at pressure to pay licensing fees, each insisting that it will pay only after its competitor does so.

112. Nigeria's over-stretched and under-trained police lack sufficient understanding of IPR. The Nigerian Customs Service has received some WIPO sponsored training, but even those officers who can identify pirated imports are not allowed, under the current law, to impound the offending materials unless the copyright owner has filed a complaint against that particular shipment, which is only done in very rare instances.

113. IPR cases are handled primarily by the Federal High Court, whose judges generally have broad familiarity with IPR protection law. However, an appeal might not be handled by a knowledgeable judge, and misapplication of the law is not uncommon. Lagos is the only region in

Nigeria where most judges have a reasonable knowledge of IPR. Further exacerbating the problem, most legal practitioners do not possess adequate knowledge of intellectual property rights to properly handle cases.

14. Nigerian artists including writers, filmmakers, and musicians have in recent years campaigned for more effective copyright protection. Lawyers active in IPR issues formed the Industrial Property Law Interest Group (IPLIG) to educate the public and lobby on behalf of industrial IPR issues. IPLIG has sponsored copyright conferences and initiated an IPR course at the Lagos Law School. Software company representatives, represented by the Business Software Alliance (BSA), successfully worked directly with the Nigerian Government to stop its use of pirated software. Nigerian filmmakers formed the Proteus Entertainment Agency to challenge copyright infringement and promote stronger law enforcement. However, a member of a group called Musical Owners Rights Association of Nigeria (MORAN) is said to have obtained an injunction against his prosecution for pirating music in Abia State in Southeastern Nigeria, placing a hold on hologram enforcement.

RECOMMEND NO CHANGE IN STATUS

15. COMMENT. Although Nigeria is a large market for pirated goods, it should not be included in USTR's Special 301 Watch List. The GON is pursuing efforts to shore up its regulatory and legal framework. Overall, the GON continues efforts to improve IPR protection. President Obasanjo's commitment to ensure that GON agencies use licensed software proves the government is not oblivious to its obligations and maintains IPR among the issues of international importance it attempts to address. Furthermore, since the Nigerian populace perceives that the value of its money has shrunk substantially over the last few years (which is, in large part, true), any move that would seem to place a higher burden on consumers would be interpreted as a cave-into U.S. policies and interests and hence would be greeted with animosity, if not outright hostility. END COMMENT.

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